Extension of Jurisdictional Separations Freeze

Associations Discussion Paper

This paper has been prepared on behalf of the Eastern Rural Telephone Association (ERTA), [1] the Independent Telephone and Telecommunications Alliance (ITTA);[2] the National Exchange Carrier Association, Inc. (NECA),[3] the National Telecommunications Cooperative Association (NTCA),[4] the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO),[5] and the Western Telecommunications Alliance (WTA)[6] (collectively, the "Associations"). It describes the Associations' position on the need to extend the freeze on jurisdictional separations factors beyond the currently-scheduled June 30, 2006 expiration date.

Background

Based on a recommendation of the Federal-State Joint Board on Separations issued in 2000,[7] the Commission "froze" certain Part 36 separations factors for a five-year period effective July 1, 2001.[8]

The Commission's *Separations Freeze Order* noted existing Part 36 separations rules were created prior to the widespread introduction of competition in the local telecommunications marketplace and before new technologies and services, including the

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[1] Eastern Rural Telecom Association is an organization of 168 rural telephone companies located in states east of the Mississippi River.

[2] ITTA is an organization of midsize incumbent local exchange carriers ("ILECs") that collectively serve over ten million access lines in over 40 states and offer a diversified range of services to their customers. Most ITTA member companies qualify as rural telephone companies within the meaning of Section 3(37) of the Communications Act of 1934, as amended (the "Act"). 47 U.S.C. § 153(37).

[3] NECA is a non-stock, non-profit association formed in 1983 pursuant to the Commission's Part 69 access charge rules. *See generally* 47 C.F.R. § 69.600 *et seq*. NECA is responsible for filing interstate access tariffs and administering associated revenue pools on behalf of over 1200 incumbent local exchange carriers (ILECs) that choose to participate in these arrangements.

[4] NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Act.

[5] OPASTCO is a national trade association representing over 550 small ILECs serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in the Act.

[6] WTA is a trade association that was formed by the merger of the Western Rural Telephone Association and the Rocky Mountain Telecommunications Association. It represents approximately 250 rural telephone companies operating west of the Mississippi River.

[7] Jurisdictional Separations and Referral to the Federal-State Joint Board, CC Docket No. 80-286, *Recommended Decision*, 15 FCC Rcd 13160 (2000) (*Joint Board Recommended Decision*).

[8] Jurisdictional Separations and Referral to the Federal-State Joint Board, CC Docket No. 80-286, *Report and Order*, 16 FCC Rcd 11382 (2001) (*Separations Freeze Order*)

Internet, changed the telecommunications landscape and blurred jurisdictional lines between interstate and intrastate services.[9] The separations freeze was expected to allow the Commission time to address several issues that resulted from the emergence of new technologies and local exchange service competition, including the appropriate separations treatment of unbundled network elements (UNEs), broadband Internet access services, private lines, and Internet traffic.[10]

Subsequent Developments

Since 2001, the Commission has taken both preliminary and final actions in a number of proceedings that have the potential to affect dramatically the resolution of separations reform issues. These proceedings include the Commission's rulemaking on intercarrier compensation reform, Universal Service Fund (USF) reform, ongoing "triennial" reviews of the Commission's Part 51 interconnection rules, proceedings on the appropriate regulatory classification of wireline broadband Internet services and IP-Enabled services, as well as various proceedings to consider petitions for regulatory forbearance submitted pursuant to section 10 of the Telecommunications Act of 1996.

Since the freeze was imposed, ILECs have largely discontinued performing the traffic studies needed to develop jurisdictional cost allocation factors, and many of the personnel familiar with these functions have subsequently moved into other positions or have retired. A recent White Paper on Separations prepared by USTelecom[11] describes the significant number of studies required as well as the significant resources needed to perform these studies should the freeze be lifted.[12] Burdens imposed on smaller rate of return carriers, who constitute most of the Associations' memberships, are proportionately as significant.

Typically, these carriers have few employees that can be dedicated to performing separations studies, and must therefore rely on outside consultants to perform the various traffic and accounting studies required by the Commission's Part 36 separations rules. It would be particularly difficult for rate of return carriers to put these mechanisms back in place by July 2006. Moreover, should the Commission determine, in the context of one of the proceedings described above or in a separate rulemaking, that such studies are no longer needed, the effort and expense associated with re-instituting traffic studies in mid-year 2006 would have been wasted.

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[9] *Id.* at ¶ 1.

[10] *Id.* at ¶ 31. The Commission more specifically determined for price-cap carriers that both category relationships and allocation factors should be frozen to obtain maximum stability and simplification. Because of their different investment and cost structures, rate-of-return carriers were only required to freeze their jurisdictional allocation factors but were permitted to elect, on a one-time basis, whether to freeze category relationships. The Commission initially required rate of return carriers to provide notice of their intentions to freeze category relationships on July 1, 2001 but subsequently extended this deadline to September 1, 2001.

[11] Letter from Robin E. Tuttle, USTelecom, to Marlene H. Dortch, FCC (Dec. 21, 2005), Attachment (*USTelecom White Paper*).

[12] *USTelecom White Paper* at 1, *citing* Comments of Verizon on *Joint Board Recommended Decision*, CC Docket No. 80-286 (Sept. 25, 2000) at 2.

Conclusion

For the reasons described above the Associations strongly support extending the current separations freeze on an interim basis. Extension of the freeze is necessary to avoid imposing substantial administrative burdens on ILECs in the current year, and will allow the Commission time to complete ongoing intercarrier compensation, universal service and other proceedings that could ultimately have profound impacts on the need for, and shape of, the Commission's Part 36 separations rules.